

Workers Compensation Caselaw Update

*328 S.W.3d 497, *; 2010 Tenn. LEXIS 887, ***

STEVEN WILLIAMS v. UNITED PARCEL SERVICE ET AL.

No. M2009-02334-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
NASHVILLE

328 S.W.3d 497; 2010 Tenn. LEXIS 887

CASE SUMMARY

PROCEDURAL POSTURE: Claimant employee filed suit in the Chancery Court for Wilson County (Tennessee) seeking to recover benefits for an additional injury to his right knee allegedly caused by over-reliance on his right leg as a result of a 2006 injury to his left knee. Following a bench trial, the trial court determined that the 2006 injury was compensable and awarded the employee 27 percent permanent partial impairment to each leg. Respondent employer appealed.

OVERVIEW: The employer denied liability for the right knee injury and sought to introduce at trial a Medical Impairment Registry (MIR) report prepared in accordance with Tenn. Code Ann. § 50-6-204(d)(5) (Supp. 2009). The trial court sustained the employee's objection to the introduction of the MIR report. The MIR program approved the report and mailed it to the parties on September 16, 2009. Counsel for the employer filed the report on September 21, 2009, the day before the trial. The trial court sustained the employee's objection to the report in part because the timeliness of the report was bothersome. The court held that the MIR report was properly prepared and certified in accordance with § 50-6-204(d)(5) and the applicable regulations; therefore, the trial court erred by excluding it on the ground that it was inadmissible hearsay. However, the trial court did not err by excluding the report on the grounds of timeliness. Because the report was made available just days before trial it was impractical, and perhaps impossible, to develop evidence to rebut the presumption of the MIR report's accuracy by clear and convincing evidence.

OUTCOME: The court affirmed the judgment of the trial court.

2011 Tenn. LEXIS 332, *

CHERYLE DARLENE GOODWIN v. UNITED PARCEL SERVICE, INC., ET AL.

No. M2010-01134-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
NASHVILLE

2011 Tenn. LEXIS 332

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer challenged a judgment of the Chancery Court for White County (Tennessee), which ruled that appellee employee did not have a meaningful return to work, found that the employee had rebutted the impairment rating in the Medical Impairment Registry report by clear and convincing evidence, and awarded the employee 65 percent permanent partial disability to her right arm.

OVERVIEW: The employee injured her arm while working for the employer. She returned to work in the same job. Her earnings were reduced because she declined offers of additional work that she had usually accepted before her injury. Prior to her injury, the employee had regularly accepted extra work as a cover driver and Saturday/Next Day Air driver. Those jobs required her to lift and carry packages as heavy as seventy pounds, without assistance. The supreme court held that the evidence supported the trial court's conclusion that the employer acted reasonably in its attempts to provide the employee with cover driver and Saturday/Next Day Air assignments after she returned to work. The evidence also supported the conclusion that the employee acted reasonably in declining those assignments, based upon her evaluation of the residual effects of her injury on her ability to perform those assignments. After her return, the employee was asked to limit her hours. That change was not related to her injury, but to economic conditions. The trial court was presented with a close question on the meaningful return to work issue, and it determined that the employee was a credible witness.

OUTCOME: The supreme court affirmed the judgment.

PRIANGLAM BROOKS v. CORRECTIONAL MEDICAL SERVICES

No. W2010-00266-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
JACKSON

2011 Tenn. LEXIS 175

CASE SUMMARY

PROCEDURAL POSTURE: Appellee employee filed a complaint against appellant employer seeking workers' compensation benefits. The Chancery Court for Shelby County (Tennessee) awarded the employee 20 % permanent partial disability. The employer and the employee appealed.

OVERVIEW: The employee suffered a compensable work-related injury and was referred, by the

employer, to a medical clinic. The employee was prescribed physical therapy, but that treatment was discontinued when it was discovered that the employee was pregnant. the employer's insurer declined to provide additional medical treatment and the employee sought further treatment. The treating physician found that the employee retained a 15 % permanent impairment, while the Medical Impairment Registry physician found no permanent impairment. On appeal, the employer contended that the trial court erred by finding that the employee had rebutted the presumption of correctness accorded to the independent medical examiner's impairment rating and that the award was excessive. The supreme court concluded that the trial court's findings were supported by clear and convincing evidence. The trial court considered its own observations of the employee, the employee's testimony, the medical proof, and the testimony of the physician who treated the employee for a number of years.

OUTCOME: The judgment of the trial court was affirmed.

*2010 Tenn. LEXIS 1020, **

WILLIAM W. GRIFFIN v. WALKER DIE CASTING, INC., ET AL.

No. M2009-01773-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
NASHVILLE

2010 Tenn. LEXIS 1020

CASE SUMMARY

PROCEDURAL POSTURE: Claimant employee filed a motion in the Circuit Court for Marshall County (Tennessee), seeking to require respondent employer to provide him with a total knee replacement pursuant to a 2007 settlement. The trial court granted the motion. The trial court also awarded attorney's fees to the employee in the amount of \$ 7,814. The employer appealed.

OVERVIEW: In 2006, the employee sustained a work-related injury when he felt a pop in his left knee while getting off a tow motor. He was released to work on March 29, 2007. He continued to receive treatment for both knees; however, after this point, none of the medical records even acknowledged the contusion injury to the left knee until March 20, 2009, when one doctor's note recalled that the employee had formerly injured the knee. Other than this reference, the employee's records referred consistently to his bilateral degenerative joint disease and left knee osteoarthritis as the conditions necessitating treatment. The employee relied only on his medical records and presented no medical testimony linking the knee replacement causally to the work related knee contusion. The court held that the employee failed to meet his burden of proving that the total knee replacement was causally related to the 2006 contusion. The medical records did not even purport to establish a causal relationship between the work-related contusion and the total knee replacement surgery. In the absence of appropriate medical evidence, the employee's testimony on the subject of causation was irrelevant.

OUTCOME: The court reversed the judgment of the trial court and remanded the case to the trial court for entry of an order denying the employee's claim.

2011 Tenn. LEXIS 194, *

ANNE MARIE SMITH v. INTEX ENTERPRISES, LLC

No. E2009-02557-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
KNOXVILLE

2011 Tenn. LEXIS 194

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, an employer and insurer (collectively, employer) sought review of the decision of the Circuit Court for Anderson County (Tennessee), which found in favor of appellee employee in a workers' compensation action and granted her motion to compel her employer to provide medical treatment.

OVERVIEW: The employee filed a motion to compel her employer to provide medical treatment pursuant to a court-approved settlement concerning a claim for an injury sustained in 2002. The trial court granted the employee's motion, the employer appealed, and the supreme court vacated the trial court's order, concluding that the employee's claim for medical treatment was not ripe for judicial resolution. There was no evidence or allegation in the record that the employee required any medical treatment for her neck. There was therefore no basis for the trial court to have ordered the employer to provide any specific medical treatment to her. It followed that there was no evidence in the record upon which the trial court could have determined whether any such proposed or suggested treatment was related to the 2002 injury, the 2004 injury, or some other cause. In the absence of such evidence, the employee's claim in her motion to compel was not ripe for adjudication.

OUTCOME: The trial court's order was vacated and remanded for any additional proceedings that might be required. Costs were taxed one-half to each party.

2010 Tenn. LEXIS 673, *

JOHN FREEMAN v. GENERAL MOTORS CORPORATION

No. M2009-02338-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
NASHVILLE

2010 Tenn. LEXIS 673

CASE SUMMARY

PROCEDURAL POSTURE: Appellee employee filed a motion to compel appellant employer to provide certain medical treatment. The Circuit Court for Maury County (Tennessee) granted the motion. The

employer appealed.

OVERVIEW: The employer contended that the trial court erred by finding that the proposed treatment was related to the work injury. The employer pointed out that the treating physician assigned a total of 12 % permanent impairment to the leg for the employee's right knee injury, attributing 10 % of the amount to the meniscus tear suffered at work and an additional two percent to degenerative changes in the knee. The employer argued that the decision to disregard the additional two percent impairment effectively constituted a finding that the employee's arthritic condition was not aggravated or advanced by his work injury. The supreme court disagreed, finding that the two depositions of the treating physician supported the conclusion that the medical meniscus tear was caused by the work injury and that there was no evidence the tear pre-existed that injury.

OUTCOME: The judgment of the trial court was affirmed.

*2010 Tenn. LEXIS 835, **

MELVIN HILL v. WHIRLPOOL CORPORATION

No. **M2009-01858-WC-R3-WC**

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
NASHVILLE

2010 Tenn. LEXIS 835

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer sought review of the decision of the Chancery Court for Coffee County (Tennessee), which awarded appellee employee 57.5 percent permanent partial disability (PPD) to the body as a whole. The trial court found the injuries to be concurrent and found that the employee had satisfied the requirements of Tenn. Code Ann. § 50-6-242(a) (2008).

OVERVIEW: After a plant closure, the employee sought reconsideration of a prior workers' compensation settlement for right shoulder and elbow injuries. The trial court found that the two injuries were concurrent and that employee was entitled to receive reconsideration as to both. It further found that employee had proven three of the four factors set out in Tenn. Code Ann. § 50-6-242(a) (2008) by clear and convincing evidence and was therefore not limited by the six times impairment cap. The trial court awarded 57.5 percent PPD disability to the body as a whole. The supreme court affirmed the holding that the injuries were concurrent but found that employee did not satisfy his burden under § 50-6-242(a). The employee's evidence concerning local employment opportunities did not address the relevant local employment market in any meaningful way, nor did it address conditions on the date set out in the statute. The employee's vocational expert opined that, even if those deficiencies were disregarded, the employee sustained a 40 percent vocational disability, which fell short of evidence that he had no reasonable employment opportunities available concerning his permanent medical condition.

OUTCOME: The supreme court affirmed the holding that the injuries were concurrent; found that employee did not satisfy his burden of proof under Tenn. Code Ann. § 50-6-242(a) (2008); modified the judgment; remanded for the entry of a modified judgment; awarded the employee 36 percent PPD to the body as a whole; and found that the employer was to receive a credit for the amount of the 2002 settlement.

2010 Tenn. LEXIS 664,

WENDY BLAIR v. WYNDHAM VACATION OWNERSHIP, INC.

No. E2009-01343-WC-R3-WC

SUPREME COURT OF TENNESSEE, SPECIAL WORKERS' COMPENSATION APPEALS PANEL, AT
KNOXVILLE

2010 Tenn. LEXIS 664

CASE SUMMARY

PROCEDURAL POSTURE: Claimant employee sought workers' compensation benefits from respondent employer in the Circuit Court for Sevier County (Tennessee). The trial court found that the employee suffered permanent injuries to her neck and lower back and that she had not made a meaningful return to work. The trial court awarded her 78 percent permanent partial disability (PPD) benefits to the body as a whole. The employer appealed.

OVERVIEW: The employee was a sales agent for a vacation property, selling time shares. She was injured when she fell from a bus used for showing prospective customers around the property. She complained of back injuries; she later testified that she also injured her neck. Nearly two months later her physicians returned her to light duty work with lifting restrictions. About 10 months after the accident, her employer attempted to schedule her return to work; however, the employee felt that she would be in too much pain and refused. An independent medical evaluation gave her 8 percent permanent impairment for the cervical injury and 5 percent for the lumbar injury. The court held that the evidence showed that the employee had a meaningful return to work within the meaning of Tenn. Code Ann. § 50-6-241(d)(1)(A) and that therefore her award of benefits was subject to a one and one-half times impairment cap. There was no evidence that the employee's decision not to return to work was based upon any medical advice or opinion. The employer acted reasonably in offering employment; the employee acted unreasonably in refusing.

OUTCOME: The court modified the judgment of the trial court to award 19.5 percent permanent partial disability benefits to the body as a whole to the employee. The judgment was affirmed in all other respects.